

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

ONE WALL STREET, INC., et al.,

Defendants.
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ORDER

CV 06-4217 (NGG) (ARL)

LINDSAY, Magistrate Judge:

Before the court is plaintiff's letter dated October 13, 2006 requesting that the court order a non-party, Toscano & Associates ("Toscano"), to comply with a subpoena served by the plaintiff. According to the plaintiff, the response was due on September 12, 2006. Plaintiff also seeks an order requiring Toscano to turn over funds held in escrow relating to One Wall Street, Inc., Donte C. Jarvis, and/or La Shondra Hatter to an interest bearing account under the court's control pursuant to Federal Rule 67 of the Federal Rules of Civil Procedure. The application is unopposed. For the reasons that follow, the application is denied.

With regard to the first issue, Federal Rule of Civil Procedure 45 authorizes an attorney as an officer of the court to issue and sign a subpoena on behalf of the court. Fed. R. Civ. P. 45(a)(3). Although plaintiff did not provide the court with a copy of the subpoena or the affidavit of service, plaintiff states the Toscano firm was served with a subpoena dated September 7, 2006 that required a response by September 12, 2006. Toscano did not comply with the subpoena, but, rather advised plaintiff on September 19th that it required additional time to respond. As the subpoena did not permit a reasonable amount of time to comply, this request was not unreasonable. Although plaintiff appears to have acceded to Toscano's request for more

time, it does not indicate what agreement was reached with respect to securing compliance. Instead plaintiff asserts that it brought this motion because Toscano failed to return later phone calls. Notwithstanding the deficiencies of this application, Toscano, by now, has had adequate time to respond to the subpoena and is therefore directed to respond or seek other relief on or before November 1, 2006.

The court next addresses the application to direct Toscano, a non-party, to transfer funds held in escrow to the control of the court pursuant to Federal Rule of Civil Procedure 67. As this application in effect seeks modification of Judge Garaufis's September 5, 2006 order, this application must be made before Judge Garaufis.

Plaintiff is directed to serve a copy of this order on Toscano both by fax and overnight federal express.

Dated: Central Islip, New York
October 24, 2006

SO ORDERED:

/s/ ARLENE ROSARIO LINDSAY
United States Magistrate Judge